

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

TONY RIPPETO, et al.,)	
)	
Plaintiffs,)	
)	
vs.)	Case No. 4:14 CV 495 RWS
)	
MIDTOWN AUTO PLAZA FORD, INC.,)	
et al.,)	
)	
Defendants.)	

MEMORANDUM AND ORDER


On November 19, 2014, I ordered defendants Auto Plaza Wentzville, Inc. and VAD Realty, LLC to show cause by 9:00 a.m. this morning why I should not grant plaintiffs' unopposed motion for summary judgment. Defendants have not responded to the Show Cause Order, and their time for doing so has now expired. Accordingly, I am granting plaintiffs' motion for summary judgment for the reasons set out in plaintiffs' motion and my November 19, 2014, Show Cause Order. As I explained, plaintiffs have demonstrated that these defendants are jointly and severally liable for the ERISA withdrawal liability assessed against defendant Mid-Town Auto Plaza Ford, Inc. Default judgment was entered against defendant Mid-Town on May 23, 2014, after plaintiffs and Mid-Town arbitrated the issue of the withdrawal liability assessment in accordance with the Multiemployer Pension Plan Amendments Act (MEPPA), 29 U.S.C. § 1381, et seq. The arbitrator found Mid-Town obligated to pay the withdrawal liability assessment, and I affirmed that award in my Memorandum and Order dated May 23, 2014 [#23]. There is no factual dispute that defendants Auto Plaza Wentzville and VAD Realty are members of a "common control group" with defendant Mid-Town, and as such plaintiffs are entitled to

judgment as a matter of law against them under ERISA, as amended by MEPPA. See 29 U.S.C. § 1301(b)(1) (“all employees of trades or businesses (whether or not incorporated) which are under common control shall be treated as employed by a single employer and all such trades or businesses as a single employer.”). Here, all three defendant businesses are owned by Nadir Djaveherian, and Auto Plaza Wentzville – a car dealership – and VAD Realty – a real estate sales business – were engaged in a “trade or business” for purposes of ERISA.

Accordingly,

IT IS HEREBY ORDERED that plaintiffs’ motion for summary judgment [#27] is granted, and plaintiffs shall have summary judgment against defendants Auto Plaza Wentzville, Inc. and VAD Realty, LLC.

IT IS FURTHER ORDERED that plaintiffs shall file a proposed form of final Judgment against all defendants within 20 days of the date of this Memorandum and Order. Any motion for attorneys’ fees shall also be filed by the same date, and any request for attorneys’ fees shall be set out in the proposed form of Judgment.



RODNEY W. SIPPEL
UNITED STATES DISTRICT JUDGE

Dated this 26th day of November, 2014.